

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.87 OF 2000
IN
WRIT PETITION NO.1904 OF 1999

Larsen and Toubro Ltd.

...Appellants

v/s

Municipal

Corporation

of

Greater Mumbai and anr.

...Respondents

Mr Aditya Chitale for Appellants.

Mr A.Y. Sakhare with Mr Nazir Shaikh for Respondents.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 11TH OCTOBER 2007.

ORAL JUDGMENT (PER D.K. DESHMUKH J.) :-

1. By this appeal, the appellant challenges the order dated 20th August 1999 passed by the learned single Judge of this Court in writ petition No.1904 of 1999. The relevant facts that are material for deciding this appeal are that the appellants imported certain consignment of goods under Duty Exemption Entitlement Certificate Scheme and Project Import Scheme. When shipment arrived at Bombay Port, the goods were kept in custom bonded warehouse to avoid demurrage till the completion of formalities for availing concessional / reduced custom duty under the above referred Scheme. When the goods were removed to the custom bonded warehouse, the petitioners lodged bill of entry for warehousing and furnished bonds to custom authorities equivalent to the whole of the estimated / provisional custom duty. At the time of removal of the goods from the custom bonded warehouse, the Bombay Municipal Corporation levied octroi duty on the said goods by adding the amount of estimated provisional custom duty to the CIF value of goods. Thereafter, the goods were removed from the custom bonded warehouse but admittedly at the time of removal of goods, the petitioners were not required to pay any custom duty as they were

exempted from payment of custom duty. As octroi duty was recovered from the petitioners by adding the amount of estimated provisional custom duty, the petitioners applied for refund of excess octroi duty recovered from them. That application was made to the Corporation. The Corporation rejected that application. Therefore, the petition was filed praying for a direction to the Corporation to refund the excess octroi duty that was recovered by the Corporation. The petition was heard by the learned Single Judge of this Court alongwith two other connected petitions. The learned Single Judge by judgment dated 20th August 1999 dismissed the petitions.

The present appeal is directed against that order.

2. The learned counsel appearing for appellants submits that under rule 4(c) of the Bombay Municipal Corporation (Levy of Octroi) Rules 1965 (for short, the said Rules), for recovery of octroi duty to the value of the goods shown in the invoice, the amount of custom duty is to be added in custom duty actually been paid or the consignee is liable to pay custom duty. The learned counsel submits that after the goods were received on the dock, while removing the goods to the custom bonded warehouse, under the bill of entry, the amount of custom duty which might have been required to be paid had the goods not been exempted from payment of custom duty, was indicated and the Corporation included that amount in

the value of the goods shown in the bill of entry and charged octroi duty. According to the learned counsel, in terms of provisions of Rule 4(c) of the said Rules, octroi can be levied on articles liable to octroi on ad-valorem basis by adding the customs duty incurred or liable to be incurred. In the instant case, admittedly the custom duty has neither been incurred nor were the petitioners liable to pay the custom duty. The amount of custom duty could not have been added to the value of the goods. The learned counsel submits that the learned Single Judge has misconstrued the provisions of the said Rules. The learned counsel appearing for Corporation, on the other hand, submits that octroi becomes leviable on the goods entering the limits of the Corporation i.e. the goods become liable for payment of octroi duty when the goods are received in the dock. In the present case, when the goods were received at the dock, as per the bill of entry, custom duty was payable and therefore, the Corporation was justified in adding the custom duty to the value of the goods. Reliance is placed on the provisions of rule 2(7)(a) which defines the term 'Value of the Articles'.

3. Now, in the light of these rival submissions

if the record of the case is perused, it appears that the charging section for octroi is section 192 of the Bombay Municipal Corporation Act, 1888. It lays down

that a tax at rates not exceeding those respectively specified in Schedule H, shall be levied in respect of the several articles mentioned in the said Schedule or so many of them or such of them as the Corporation shall from year to year in accordance with section 128 determine on the entry of the said articles into Greater Bombay for consumption, use or sale therein. The said Rules lay down the procedure that is to be followed for collection of octroi duty. The provision relied on by the Corporation is the provision of rule 2(7)(a) of the said Rules which reads as under :-

"2(7)(a) 'Value of the articles' where octroi is charged ad-valorem shall mean the value of the articles as ascertained from original invoice plus shipping dues, insurance, custom duties, excise duties, countervailing duty, sales tax, transport fee, vend freight charges, carrier charges and all other incidental charges, excepting octroi incurred or liable to be incurred by the importer till the articles are removed from the place of import."

. Perusal of the above quoted provision shows that where octroi is charged ad-valorem, value of the articles is to be ascertained from original invoice,

shipping dues, insurance, custom duties, excise duties, countervailing duty, sales tax, transport fee, vend freight charges, carrier charges and all other incidental charges incurred or liable to be incurred by the importer are to be included in the value of the articles. Thus, it is clear that in the value of the articles shown in the original invoice, the amount of custom duty incurred or liable to be incurred can be included. Rule 4 deals with procedure that is to be followed. For our purpose, it is Rule 4(c) which is relevant, which reads as under :-

"4(c) In respect of articles imported from foreign ports subject to customs duty and liable to octroi it shall not be necessary for the importer to produce the original invoice but the weight and value accepted by the Customs shall be accepted as basis for the levy of octroi and octroi shall be levied on articles liable to octroi on ad-valorem basis by adding the customs duty incurred or liable to be incurred to the aforesaid value accepted by the customs." (emphasis supplied)

. Perusal of the above quoted Rule shows that it lays down that goods which are subject to payment of custom duty and liable to octroi on the basis of value

of the goods shown in the invoice, the amount paid or liable to be paid as custody duty is to be added. In the present case, admittedly, the amount of custom duty which the petitioners would have been liable to pay, had the petitioners not been exempted from payment of custom duty, has been added to the value of the articles shown in the original invoice and octroi duty has been charged. Perusal of the bill of entry itself shows that no custom duty was payable on the goods. The amount of custom duty, which was mentioned in the bill of entry was the amount which the importer would have been liable to pay had there been no exemption from payment of custom duty the amount mentioned is the estimated amount of custom duty payable had there been no exemption. Therefore, even when the goods were received on the dock, custom duty was not payable by the petitioners. In any case, in our opinion, the language of Rules 2(7)(a) and 4(c) is absolutely clear that the amount of custom duty which can be added to the value of the goods shown in the invoice is the amount of custom duty, which the importer is liable to pay or which is actually paid by the importer. In other words, before charging octroi duty by including the custom duty in the value of the goods shown in the invoice, the Corporation will have to show either that the custom duty has actually been paid or that the importer was liable to pay the octroi duty. In so far as the present case is concerned, there

appears to be no dispute that custom duty was not actually paid because of the exemption. In our opinion, therefore, the Corporation was not justified in including the estimated custom duty in the value of the articles shown in the original invoice for the purpose of calculating the amount of octroi duty liable to be paid and therefore it is obvious that the octroi was recovered in excess by the Corporation.

4. An application was made by the petitioners under Rule 26 of the said Rules. Rule 26 reads as under :-

"26. Repayment or refund of octroi paid wrongly or in excess :- When octroi has been wrongly recovered or has been recovered in excess through inadvertence, error, misconception, misinterpretation or any other reason on the part of the Municipal Octroi staff or that of the agents appointed by the Commissioner under section 213 of the Bombay Municipal Corporation Act, such excess may be refunded to the importer provided that a claim for such refund accompanied by the original invoice, octroi import bill, octroi receipt if any is lodged in the office of the Deputy Assessor and Collector (Octroi) within

a period of three months from the date of such recovery or within such longer period as the Commissioner may in any special case or class of cases allow. The said officer may, after being satisfied about the correctness and genuineness of the claim, grant refund of octroi wrongly recovered or recovered in excess."

. Perusal of the above quoted rule shows that when octroi amongst other things, has been recovered due to any error, misconception or misinterpretation, then refund can be claimed by the importer. As we find that octroi was recovered in excess from the petitioners inasmuch as the amount of custom duty was included in the value of the articles shown in the invoice, the petitioners are entitled to the refund of octroi paid in excess. In our opinion, therefore, writ petition filed by the petitioners deserves to be allowed. In the result therefore, appeal succeeds and is allowed. The order impugned in the appeal is set aside. Rule in the writ petition filed by the petitioners is made absolute in following terms. The order impugned in the petition dated 18th February 1999 is set aside. The Deputy Assessor and Collector (Octroi), B.M.C., Bombay 400 001, who has passed the order, is directed to consider the application filed by the petitioners for refund de novo

in accordance with law and the observations made in this judgment and make his order within a period of twelve weeks from the date of receipt of this order.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)